

LOUIS M. BUBALA III, ESQ.
Nevada State Bar No. 8974
ARMSTRONG TEASDALE LLP
50 W. Liberty St., Ste. 950
Reno, NV 89501
Telephone: 775.322.7400
Facsimile: 775.322.9049
Email: lbubala@armstrongteasdale.com

Attorneys for City of Tulsa

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January 29, 2013

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

CARL J. MORONY,

Debtor.

Case No.: BK-N-13-10310-BTB

Chapter: 11

**RESPONSE TO ORDER TO SHOW
CAUSE, WITH CERTIFICATE OF
SERVICE**

Hearing Date: 02/05/2013

Hearing Time: 1:30 p.m.

**Location: Courtroom #4, Second Floor,
300 Las Vegas Boulevard South, Las
Vegas, Nevada.**

Although the order to show cause is premised on Debtor's failure to obtain prepetition credit counseling, the City of Tulsa files this response to address the implications of a potential dismissal.

Mr. Morony acted in bad faith and manipulated the bankruptcy system to his advantage by filing two bankruptcy petitions that stopped sheriff's sales of the Tulsa Club Building. If his case is dismissed, Mr. Morony should be enjoined for 180 days from filing any additional cases for himself or any special purpose entity that acquires Mr. Morony's property during that period. 11 U.S.C. §§ 105, 109(g), 349(a). To the extent that the Court requires additional briefing or hearing before issuing an injunction, the Court should keep this case pending and grant the City relief from the automatic stay to complete the sheriff's sale and to dispossess Shamrock and/or Mr. Morony from any possessory interest in the Tulsa Club Building.

Alternatively, the stay should be terminated to permit the City to proceed against the Tulsa Club Building, with the dismissal order deferred until after completion of the sale. This is the procedure approved of by the Court in the Shamrock case, with the Court noting that it "serves as

1 something of an impediment to someone filing another bankruptcy” to stop the sale again. Mr.
 2 Morony, who attended the Shamrock hearing, circumvented that point by filing his own bankruptcy
 3 and invoking the stay in his case to persuade the sheriff to cancel the rescheduled sale.

4 As a final alternative, the Court should retain jurisdiction, require Mr. Morony to file his
 5 schedules and statements, and appoint a Chapter 11 trustee or convert the case to Chapter 7. It is
 6 admitted that Mr. Morony filed his petition to stop the sale of the Tulsa Club Building, even though
 7 he no longer owns the property. He achieved that goal when the sheriff cancelled the sale, and he
 8 has taken no further steps to prosecute this case. If this case is dismissed without the conditions
 9 requested above, the City expects that on the eve of the next scheduled sheriff’s sale, Mr. Morony
 10 will file a third bankruptcy petition. The petition might be filed in Nevada, but is just as likely to be
 11 filed in California where he lives or in Oklahoma where the property is. Such a filing will further
 12 delay the sheriff’s sale and increase the City’s costs, all without a good-faith basis for the filing. Mr.
 13 Morony has abused the judicial system, and he should not be allowed to continue to manage his
 14 affairs to the detriment of the City and his other creditors. Mr. Morony’s gamesmanship should
 15 constitute the exigent circumstances under Section 109(h) to retain his bankruptcy case. He has
 16 admitted himself to bankruptcy court, and he should not be released freely to the detriment of
 17 creditors.

18 **LEGAL STANDARD**

19 The Bankruptcy Court “for cause” may modify the effect of the dismissal of a bankruptcy
 20 case. 11 U.S.C. § 349(a); *see Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223 (9th Cir. 1999).
 21 “Inherent in this authority is the power to bar subsequent bankruptcy petitions that seek to discharge
 22 such debt.” *Leavitt v. Soto (In re Leavitt)*, 209 B.R. 935, 942 (BAP 9th Cir. 1997), *aff’d*, 171 F.3d
 23 1219 (9th Cir. 1999). “Furthermore, cases which have looked to the legislative history of § 349 note
 24 that it was intended to provide courts with authority to control abusive filings ‘beyond the limits of §
 25 109(g)’ even in the case where the bankruptcy court enjoined the filing by a debtor of any case under
 26 Title 11 for a period greater than 180 days.” *Id.* & n.15 (emphasis added; citing cases); *see also In re*
 27 *Robertson*, 206 B.R. 826 (Bankr. E.D. Va. 1996) (holding that injunction under Section 349 may be
 28 entered without adversary proceeding).

1 The standard for cause to modify the terms of dismissal looks, in turn, to the standard for
 2 cause for dismissal. *Leavitt*, 171 F.3d at 1224. Cause under Section 1112(b)(4) is illustrative of
 3 cause, not exhaustive. *In re Products Int'l Co.*, 395 B.R. 101, 109 (Bankr. D. Ariz. 2008). “[T]he
 4 Court should consider other factors as they arise, and use its equitable powers to reach the
 5 appropriate result in individual cases. Moreover, courts have wide discretion in determining what
 6 constitutes such cause.” *Id.* (quotation & citation omitted). In *Leavitt*, a Chapter 13 case, the
 7 bankruptcy court considered four factors: (1) whether the debtor misrepresented facts in his petition,
 8 unfairly manipulated the Bankruptcy Code, or filed his petition in an inequitable manner; (2) the
 9 debtor’s history of filings and dismissals; (3) whether the debtor only intended to defeat state court
 10 litigation; and (4) whether egregious behavior is present. 171 F.3d at 1224.

11 Bankruptcy Code Section 109(g) also addresses dismissal and an potential injunction against
 12 refilling: “[N]o individual ... may be a debtor under this title who has been a debtor in a case
 13 pending under this title at any time in the preceding 180 days if the case was dismissed by the court
 14 for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper
 15 prosecution of the case.” 11 U.S.C. § 109(g)(1).

16 Finally, the Bankruptcy Court is empowered to protect the sanctity of proceedings before it.
 17 “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the
 18 provisions of this title. No provision of this title providing for the raising of an issue by a party in
 19 interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any
 20 determination necessary or appropriate to enforce or implement court orders or rules, or to prevent
 21 an abuse of process.” 11 U.S.C. § 105(a). *See also Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991)
 22 (discussing court’s inherent powers to manage its own affairs).

23 **ARGUMENT**

24 The facts of this case support an injunction. As discussed and supported in the City’s motion
 25 for relief from the automatic stay and the supporting papers, Mr. Morony’s conduct establishes cause
 26 under Section 349, as well as the necessary grounds under Section 109(g), Section 105, and the
 27 Court’s inherent power.

28 Mr. Morony owned the Tulsa Club Building since at least 1997 until days before filing the

1 Shamrock bankruptcy. The property has been vacant the entire time, cited for numerous code
2 violations, damaged by fire, and declared a nuisance by the City. Just days before the City sought to
3 complete a sheriff's sale of the building, Mr. Moroney created Shamrock, transferred the property to
4 Shamrock, and filed a bankruptcy petition for Shamrock. The City moved for stay relief based in
5 part on the sham nature the transaction and bankruptcy filing, the Office of the U.S. Trustee moved
6 for dismissal because Shamrock did not retain counsel or comply with its obligations as a debtor.

7 The Court granted both motions. As discussed in the supporting declaration from Mr.
8 Bubala, the Court asked whether it made sense to delay entry of the order of dismissal until after the
9 City completed the sale of the Tulsa Club Building. The City and Office of the U.S. Trustee agreed
10 such a procedure. The Court waived the local rule regarding the standard time periods to submit the
11 written order dismissing the case. The Court itself raised the point that if the property owner
12 remained in an open bankruptcy, the property could not be transferred or otherwise subject to
13 another bankruptcy petition by the owner to stop the sheriff's sale again. Mr. Morony personally
14 attended this hearing, was in attendance during the Court's pronouncement, and then tried to address
15 the Court. (The Court declined the request since Shamrock is a business entity and Mr. Morony is
16 not an attorney.)

17 The foreclosure sale was scheduled for January 15, 2013. Notwithstanding the fact that he no
18 longer owned the Tulsa Club Building, and the owner, Shamrock, remained in an open bankruptcy
19 case, Mr. Morony personally filed for bankruptcy. He then proceeded to notify the Tulsa County
20 sheriff's department, which cancelled the sale out of concern about the automatic stay. In doing so,
21 Mr. Morony purposefully sought to evade the Court's point in the Shamrock case that the case
22 remain open until the sale was completed.

23 As to the explicit statutory basis for cause, Mr. Morony has failed to comply with the Court's
24 order to show cause. 11 U.S.C. § 1112(b)(4)(E). The order directed Debtor "to appear and show
25 cause why this case should not be dismissed for failure to comply with the credit counseling
26 requirement of Section 109(h)(1). The Debtor shall file a response to this order to show cause" (Ct.
27 Dkt. #9 at 2-3. The only papers filed in response to the order is a declaration from debtor's counsel,
28 Mr. Thomas (Ct. Dkt. 17).

1 The declaration reads less like a response of the Debtor, and more of a defense of counsel
2 concerned about his culpability in the filing. As Mr. Thomas explained, he advised Mr. Morony of
3 the requirement to obtain credit counseling but proceeded to file the petition at Mr. Morony's
4 direction without prepetition credit counsel because he sought to "stop the sheriff's sale." This point
5 was explicitly made in the papers filed with the petition when Mr. Morony sought to explain the
6 absence of credit counseling.

7 Mr. Thomas explicitly raised the attorney-client privilege to avoid further discussion of the
8 matter. The invocation of the attorney-client privilege is telling, given counsel's ethical obligations.
9 Mr. Thomas, as Mr. Morony's counsel, necessarily certified that the bankruptcy petition was "not
10 being presented for any improper purpose, such as to harass or to cause unnecessary delay or
11 needless increase in the cost of litigation; [and] the claims, defenses, and other legal contentions
12 therein are warranted by existing law or by a nonfrivolous argument for the extension, modification,
13 or reversal of existing law or the establishment of new law." Fed. R. Bankr. P. 9011(b)(1)-(2).
14 Given the fact that the stay in Mr. Morony's case could not properly stop the sheriff's sale since
15 property did not belong to his estate, as well as the provisions of Section 362(b)(20), Mr. Morony's
16 petition still was filed with the explicit purpose of stopping the sale.

17 To the extent the declaration seeks to explain the filing, it is premised on hearsay and
18 incorrect statements. Mr. Thomas declared: "The basis for the Shamrock ruling [for stay relief] was
19 the failure of Shamrock to retain counsel to represent the LLC in the bankruptcy." This is simply
20 incorrectly based on the plain language of the stay relief order in the Shamrock case, attached to the
21 City's motion for stay relief in this case. The order specifically identifies the grounds for stay relief
22 as cause under Section 362(d)(1), lack of equity and not necessary for reorganization under Section
23 362(d)(2), and transfer of property without consent of secured creditor in attempt to interfere with
24 the creditor's rights under Section 362(d)(4). As noted in Mr. Bubala's supporting declaration, those
25 points were explicitly raised at oral argument, points absent from Mr. Thomas's declaration.

26 As another explicit statutory basis for cause, Mr. Morony has failed to satisfy timely any
27 filing or reporting requirement. 11 U.S.C. § 1112(b)(4)(F). Mr. Morony filed a skeleton petition.
28 The court clerk issued a notice of deficient filing. More than 14 days have passed since Mr. Morony

1 filed his petition, and he has not filed the missing schedules and statements.

2 These points, as well as Mr. Morony's overall conduct, provide a proper basis to enjoin him
 3 from filing another bankruptcy petition for 180 days under Section 349(a), Section 109(g), Section
 4 105, and the court's inherent power. This Court has recognized that "bad faith [is] inherent in filing
 5 a chapter 11 case for a newly formed entity to which real property had been recently transferred in
 6 an effort to thwart foreclosure of those properties." *Adelson v. Smith (In re Smith)*, 389 B.R. 902,
 7 923 (Bankr. D. Nev. 2008) (Markell, J.). That is exactly what Mr. Morony did in creating
 8 Shamrock, transferring the property to it, and filing its bankruptcy petition. He has continued that
 9 misconduct by filing his own bankruptcy petition. His conduct also satisfies all the badges of bad
 10 faith identified by the Ninth Circuit in *Leavitt*: (1) whether the debtor misrepresented facts in his
 11 petition, unfairly manipulated the Bankruptcy Code, or filed his petition in an inequitable manner;
 12 (2) the debtor's history of filings and dismissals; (3) whether the debtor only intended to defeat state
 13 court litigation; and (4) whether egregious behavior is present. 171 F.3d at 1224.

14 The injunction also should apply to any special purpose entity created by Mr. Morony in
 15 attempt to segregate his assets. The scope of the injunction may properly extend to "restrain[a
 16 debtor from] conveying the property in question to a 'strawman' who then filed for bankruptcy
 17 relief, and that, if such a transfer takes place, the automatic stay relating to that 'strawman'
 18 bankruptcy, or any such subsequent 'strawman' bankruptcies, are likewise lifted as to the plaintiff ...
 19 both as to the holding of a foreclosure sale and subsequent unlawful detainer proceedings."
 20 *Community Thrift & Loan v. Davis (In re Wong)*, 30 B.R. 87, 89 (Bankr. C.D. Cal. 1983), *cited*
 21 *favorably by Modica v. Ozone Park Funding Assocs.*, 442 B.R. 189, 193 (E.D.N.Y. 2010).

22 Dated this 24th day of January, 2013

ARMSTRONG TEASDALE LLP

23 By: /s/Louis M. Bubala III
 24 LOUIS M. BUBALA III, ESQ.

25 Attorneys for City of Tulsa
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 27
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CERTIFICATE OF SERVICE

On January 29, 2013, I served the following document(s):

RESPONSE TO ORDER TO SHOW CAUSE, WITH CERTIFICATE OF SERVICE

2. I served the above-named document(s) by the following means to the persons as listed below:

- a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

LOUIS M. BUBALA on behalf of Creditor CITY OF TULSA, OKLAHOMA
lbubala@armstrongteasdale.com, bsalinas@armstrongteasdale.com

TIMOTHY P. THOMAS on behalf of Debtor CARL MORONY
TTHOMAS@TTHOMASLAW.COM, veralynn@tthomaslaw.com

U.S. TRUSTEE - LV - 11
USTPRegion17.lv.ecf@usdoj.gov

- b. **United States mail, postage fully prepaid** (list persons and addresses):

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 29th day of January, 2013.

Barbara Salinas
Name

/s/ Barbara Salinas
Signature